No. 00-1142

Supreme Court, U.S.
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In the

Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ANDRE DELAWARE,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

REPLY BRIEF FOR PETITIONER

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ARGUMENT

In its petition, the State of Illinois clearly established that the Appellate Court's opinion unduly limits the scope and duration of lawful *Terry* stops, placing police officers and the public in serious jeopardy. The record before this Court reveals that it was reasonable for the officers to suspect that respondent was involved in a shooting and that respondent left a gun in his car when he abruptly exited the car and ran away from the police. At the suppression hearing, Officer Kuykendoll repeatedly testified that he wanted to search the Jeep for weapons. (R. B10, 11, 23) It was also clear from the record that a potential weapon in the Jeep posed a danger to the officers and the public because respondent left the driver's door open as he fled from the police. (R. B10) Therefore, Petitioner is at a loss to understand how respondent can seriously claim that in the trial court neither party introduced evidence directly pertaining to "public safety," and as result, this Court lacks jurisdiction to review the public safety argument advanced by Petitioner. (See, Resp.'s Br. In Opp. at 5-10) Common sense dictates that an abandoned gun in an open car poses a danger to the public and that the Appellate court's opinion strips the police of the authority to confront that danger. As such, this Court should reject respondent's jurisdictional argument.

Respondent also attempts to escape the fact that the officers faced a real and immediate public safety concern by misrepresenting the testimony of Officer Kuykendoll. Respondent claims that the parking lot where the officers saw and chased the group suspected of firing shots was not the same parking lot where the officers went to search for weapons and encountered re-

spondent. In his Statement of Facts, respondent specifically stated:

> **In the parking lot at 5135 S. Federal**, Kuykendoll observed a group of between three to ten males. Defendant Andre Delaware was not a member of this group. In fact, Delaware was never in or near the building located at 5135 S. Federal Street.
>
> Officer Kuykendoll suspected someone in the group of three to ten males fired the gun shots; therefore, Kuykendoll and his partners approached the group to investigate. However, every person in this group ran away and into the building at 5135 S. Federal Street.
>
> **The three officers chased after and followed the fleeing group into the building at 5135 S. Federal.** While in the staircase in the building, the three officers lost every single fleeing man in the group. Thus, Kuykendoll and his two partners failed to catch anyone from the group suspected firing the gun shots. After losing the entire group in the staircase, the officers then exited from the building at 5135 S. Federal. (R. B7; B16-18)
>
> **Next, the three officers went to a nearby but different parking lot at 5100 S. State.** The officers arrived in this different parking lot five minutes after losing the entire group of suspected shooters in the staircase of the building at 5135 S. Federal. (R. B6; B18)
>
> **Five minutes after losing the entire group of men suspected of firing shots, the officers continued to search for weapons, bullets and shell casings in the different parking lot at 5100 S. State Street.** The officers did not find any guns or bullets or shell

> casings in the parking lot at 5100 S. State Street.
>
> While searching the ground of the State Street parking lot, Kuykendoll saw Defendant Delaware depart from a Jeep parked in the lot at 5100 S. State Street. Kuykendoll was 20 yards away from Delaware at this time. (R. B8-9; B19) (emphasis added)

Respondent's assertion that there were two parking lots is directly contradicted by the record.[1] The following ex-

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[1] Significantly, on direct appeal respondent set forth yet another version of the facts:

> "After losing the group, Kuykendoll and his partners then exited from the building and returned to their car in the parking lot. (B7; B16-18) Next Kuykendoll drove his police car and his two partners out of the parking lot at 5135 S. Federal.
>
> After leaving 5135 S. Federal, Kuykendoll and his partners then drove to a different parking lot located at 5100 S. State Street. Kuykendoll drove to the different parking lot at 5100 S. State to somehow continue investigating the possible gun shots fired earlier at 5135 S. Federal.
>
> Five (5) minutes after losing the group suspected of firing the gun shots, Kuykendoll and his partners arrived in the different parking lot at 5100 S. State (B8; B18)" (Deft.'s Br. at 2) (emphasis added)

There is absolutely no testimony that the officers returned to their car, re-entered it and then drove to a non-existent parking lot. Unfortunately, the Illinois Appellate Court relied on respondent's version of the facts and based its analysis of the issue on the false assertion that there were two parking lots. Petitioner filed a petition for rehearing requesting the Appellate Court to re-examine the propriety of the officers' conduct within the context of the actually testimony presented at the suppression hearing. (*See* Petition for Rehearing) Unfortunately, the Appellate Court denied the petition.

cerpts of Officer Kuykendoll's testimony totally exposes respondent's version of the facts as a self-serving manipulation of the record:

> Q [Prosecutor]: And when you got to that area can you tell Judge Karnezis what is that you saw?
>
> A: **We pulled up into the parking lot**. There were shots still being fired. A foot chase ensued. We chased several male blacks into 5135 Federal building where we lost them in the staircase.
>
> **Q: And as you ran chasing these gentlemen did you notice any vehicles in the area?**
>
> **A: Well we did notice a Jeep Cherokee.**
>
> Q: And you didn't stop at the Jeep Cherokee at that point, did you?
>
> A: No, sir.
>
> Q: Were you able to catch the gentlemen that were on foot and running from you?
>
> A: No sir.
>
> Q: After you were able—not able to catch up with him did you go anywhere?
>
> A: Yes, sir.
>
> Q: Where did you go?
>
> **A: We came back to the parking lot because we were looking to see if they had dropped any weapons or shell casings. We observed the defendant jump out of his vehicle. It was a white Jeep Cherokee.** (R. B7-8) (emphasis added)
>
> * * *
>
> **Q [defense counsel]: Then you and your partner returned back over to 5100 South State, right?**

A: That's correct, to the parking lot area.

Q: And searched for weapons?

A: That's correct

Q: This was what? **About five minutes after you had begun chasing these individuals to the Federal address?**

A: That's sounds about right, sir.

Q: And when you got back over to 5100 South State you didn't find any weapons over there, did you?

A: No, we didn't.

Q: Didn't find any cartridges over there, did you?

A: No we didn't.

Q: You saw a white Cherokee parked in the parking lot over there, right?

A: That's correct.

Q: And the area where you saw that in fact was where people who live in those buildings can park their cars. It's their parking lot, is that correct?

A: Yes.

Q: And you had not seen—Had you seen that car actually drive up and park there or was it stopped?

A: It was already there when we came in.

Q: It's your testimony that you saw my client and coming out of that car, is that correct?

A: That's correct.

Q: Now that is at 6:30 in the morning and there had been a lot of gunshots out there, right?

A: Yes, sir. (R. B18-19) (emphasis added)

Hence, the above-quoted excerpts establish, beyond any doubt, that the parking lot where the officers began to chase the group of men suspected of firing gun shots and the parking lot where the officers encountered respondent and the Jeep were one and the same. Indeed, it makes no sense that the officers would go to a different parking lot to search for weapons and shell casings.

Moreover, an examination of the trial court's findings also refutes the existence of a second parking lot. In denying defendant's motion to quash arrest and suppress evidence, the trial court made the following findings of fact:

> "[The] Court finds on the date in question the officers were in the vicinity of 51st and State slash Federal. They heard shots fired. They saw people running. They chased them. They did not apprehend them. They returned to the area. They observed Mr. Delaware who was then alighted, leaving the door open and running." (R. B30-31)

The record clearly proves that the officers encountered respondent in the parking lot where the shots were fired and the chase of the group of suspects began.[2]

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[2] Another factor militating against the defendant's version of the facts and this Court's finding is that State Street is the dividing line between east and west address designations in the City of Chicago and Federal Avenue is designated as being located at 56 West. Thus, Federal Avenue is less than one full block west of State Street. Further, the building to which defendant fled has the address of 5100 South State, thereby placing it on the west side of State Street, as even-numbered addresses on Chicago's north-south streets are located on the

(continued...)

Respondent also argues that Petitioner's argument is invalidated by the fact that Officer Kuykendoll testified that he placed respondent under arrest in the apartment. (Resp.'s Br In Opp. at 10-12) However, in *Scott v. United States*, 436 U.S. 128, 137 (1978), this Court stressed the fact that "almost without exception in evaluating alleged violations of the Fourth Amendment the Court has undertaken an objective assessment of an officer's actions in light of the facts and circumstances known to him." Hence, this Court held that "the fact the officer does not have the state of mind which is hypothecated by reasons which provide the legal justification for the officer's actions does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Scott*, 436 U.S. at 138. This Court further acknowledged that motives are not always to be disregarded in a suppression inquiry, but stated that the focus on intent becomes relevant **only after** a court determines that the Constitution was in

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[2] (...continued)
east side of the street while odd-numbered addresses are located on the street's east-side. Besides, there are no other north-south streets between State Street and Federal Avenue in the area in question. This Court may take judicial notice of these facts, for they are common knowledge. *See Carroll v. United States*, 267 U.S. 132 (1925). Thus, as the officer testified there is but one parking lot into which he and his partners entered, and it is reasonable to infer that this parking lot is common to those housing authority buildings which have both State Street and Federal Avenue addresses in the vicinity of 51st and State Street, including the 5135 South Federal building into which the group of men and the 5100 South State Street building into which defendant fled when he saw the officers walk toward him upon their return to the parking lot.

fact violated. As thoroughly discussed in the Petition for Writ of Certiorari, the police officers had a legitimate reason to detain respondent and search his vehicle. *Scott*, 98 S.Ct. at 1724. *Also see, Whren v. United States*, 517 U.S. 806 (1996) (where this Court reaffirmed the position that a police officer's actual motivations cannot invalidate a seizure which is objectively justified); *Berkemer v. McCarthy*, 468 U.S. 420, 442 (1984) ("A police officer's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time.") As a result, Officer Kuykendoll's subjective beliefs are irrelevant since he and his partners complied with the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968).

Furthermore, contrary to respondent's position, Petitioner has set forth compelling reasons to grant this petition. The opinion of the Appellate Court undermines the very purpose of the *Terry* decision because it prematurely halts the scope and duration of a **lawful** stop by failing to provide officers with the opportunity to dispel their reasonable fear that a suspect of a shooting left a gun in a vehicle. Respondent does not challenge the fact that similar scenarios are bound to occur throughout the country. Petitioner again urges this Court to take this opportunity to equip the police with the authority to perform a protective search of a vehicle where the officer has a reasonable belief that a weapon is hidden in that vehicle and that such a weapon poses a danger to investigating officers and others nearby.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

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